94.

SUPREME COURT OF THE UNITED STATES.

No. 120.

JOHN KENNETT, EZEKIEL S. HAINES, EDEN B. REEDER, GEORGE GRAHAM, JR., JOHN McCARTY, JOSHUA YORKE, AND ROBERT B. BOWLER, APPELLANTS,

vs.

THOMAS J. CHAMBERS.

IN ERROR TO THE DISTRICT COURT, UNITED STATES, FOR TEXAS.

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Gideon, Print.

District court of the United States, district of Texas, December term, 1848.

Be it remembered, that in the district court of the United States of America, having and exercising the power and jurisdiction of a circuit court of the same, for the district of Texas, sitting in equity at the city of Galveston, within the said district, on the 24th day of May, in the year of our Lord one thousand eight hundred and forty-eight, John Kennett, Ezekiel S. Haines, Eden B. Reeder, George Graham, jr., John McCarty, Joshua York, Robert B. Bowler, filed their bill of complaint against Thomas Jefferson Chambers, in the words and figures following, that is to say:

To the honorable the judge of the district court of the United States, in and for the district of Texas, the same being a court of circuit court powers and jurisdiction, sitting in equity.

John Kennet, Ezekiel S. Haines, Eden B. Reeder, George Graham, jr., John McCarty, Joshua York, Robert B. Bowler, who are residents of the city of Cincinnati, and citizens of the State of Ohio, on behalf of themselves and all others having any joint or several interest in the claim or claims, contract or contracts, demand or demands, and who may come in with your orators and contribute to the expenses of this suit, bring this bill against Thomas Jefferson Chambers, who is a resident of the county of Liberty, and a citizen of the State of Texas; and thereupon your orators complain and say, that heretofore, to wit, on or about the sixteenth day of September, in the year of our Lord one thousand eight hundred and thirty-six, at the city of Cincinnati, in the State of Ohio, the said defendant, Thomas Jefferson Chambers, entered into a certain contract with one Morgan Neville and others, of the said city of Cincinnati, and which said contract, sealed with the seal of the parties thereto, and now in the hands of your orators and ready to be produced, is in the words and figures following, that is to say:

"This article of agreement, entered into this sixteenth day of September, in the year eighteen hundred and thirty-six, between General T. Jefferson Chambers, of the Texan army, of the first part, and Morgan Neville, Robert T. Lytle, William R. Foster, S. C. Ogden, J. York, George Graham, jr., John McCarty, of the city of Cincinnati, of the second part, witnesseth: That the said party of the second part being desirous of assisting the said Genl. T. Jefferson Chambers, who is now engaged in raising, arming, and equipping volunteers for Texas, and who is in want of the means therefor, and being extremely desirous to advance the cause of freedom and the independence of Texas, have agreed to purchase of said T. Jefferson Chambers, of his private estate, the lands hereinafter to be described; and the said Gen. T. Jefferson Chambers, for and in consideration of twelve thousand, and *five thou-*

sand and five hundred dollars, to be paid as follows, in equal instalments of four, six, and twelve months, the receipt whereof is hereby acknowledged, in notes payable and due as above, in four, six, and twelve months, of the party of the second part, doth hereby agree to sell, convey, and hath sold and aliened in fee simple to the said party of the second part, the following described lands, for which the said Chambers is to make title and conveyance, as hereafter pointed out, to wit, twelve thousand five hundred acres of land, situated in Texas, in two parcels, to come out of two tracts of land as follows, to wit: Four thousand and five hundred acres, to [be] laid off from and out of two leagues of land lying on the eastern margin of the river Brasos, above and adjacent to the San Antonio road, being divided from the balance of the two leagues by a line parallel to the upper line thereof; and the balance, being the other and remaining eight thousand acres, to be taken similarly to the first, by a line parallel to the upper line of a tract of four leagues, being also on the eastern margin of the Brasos river, in Texas, above and adjacent to the league granted to one Setsum Purdy, and opposite to the mouth of Pond creek; the said lands being owned by the said Genl. T. Jefferson Chambers, and having been granted and conveyed to him, as recompense and salary due said Chambers for acting as superior judge in Texas, absolute and unconditionally.

And it is further agreed between the above parties, the legal title is to remain in the said T. Jefferson Chambers, who is to hold said lands as trustee, for the sole use and benefit of the said party of the first part, their heirs, assigns, or appointees. And further, the [said] T. Jefferson Chambers obligates himself, his heirs, assigns, and legal representatives, to hold said lands as above specified, and the same to convey and deed, by general warranty deed, to said party of the second part, jointly and severally, or to their heirs, assigns, or appointees of the said party of the second part, jointly or severally, in such proportions, and such manner, and such quantities, as shall be determined among themselves. And further, for the faithful performance of all the matters and things therein specified, the said T. Jefferson Chambers binds himself, his heirs, assigns, and legal representatives, in the penal sum of thirty thousand dollars; to do and perform which, said penalty is hereby agreed between the parties to be liquidated, damages in case of non-performance on the part of the said party of the first part. And further, the said T. Jefferson Chambers authorizes and consents to have this article entered upon the files of any court in Texas, and judgment to be taken thereon, as confessed against the said T. Jefferson Chambers, for the penalty above named, at any time the same may be desired by the party of the second part, or their legally authorized agent; and said judgment is to be entered satisfied, on the performance of the matters and things agreed to be performed on the part of the said T. Jefferson Chambers. And also, in addition to the above, that the party of the second part may also take, as confessed, on filing this article, or a copy thereof, in the courts of Texas, a decree for the specific performance of this agreement; but, in this latter case, a possession and

enjoyment of said lands under the decree shall be a discharge of the judgment on the penalty, and that the same course may be taken against the heirs and legal representatives of the said T. Jefferson Chambers. And the party of the second part agree to lift their notes at the time the same become due; but in no case shall the failure of one to lift his note affect the rights of the others, but he who fails to lift his note shall lose his land, unless the balance of the company, the party of the first part, lift the same, when they shall be entitled to his portion of the land; and it is further agreed, that the party of the second part shall divide the balance among themselves.

In witness whereof we have hereunto set our hands and seals, this sixteenth day of September, in the year eighteen hundred and thirty-six.

In presence of—

T. JEFFERSON CHAMBERS,	[L. S.]
MORGAN NEVILLE,	[L. S.]
ROBERT T. LYTLE,	[L. S.]
WILLIAM R. FOSTER,	[L. S.]
S. C. OGDEN,	[L. S.]
JAS. McCLELLAN,	[L. S.]
J. YORKS,	[L. S.]
J. S. VATTIER,	[L. S.]
GEO. GRAHAM, JR.,	[L. S.]
JOHN McCARTY,	[L. S.]
EDEN B. REEDER, on twenty part.	[L. S.]

Your orators further show unto your honor, that although the names of the said James McClellan, J. S. Vattier, and Eden B. Reeder were not inserted in the body of the contract, but were omitted by mistake and through inadvertence, that, nevertheless, they signed and sealed the said contract as parties of the second part, with the full knowledge and assent of the said T. Jefferson Chambers; he, the said Chambers, receiving from them, under the said contract, the consideration hereinafter mentioned; and that it was the true intent and meaning of the said contract, or attribute of agreement, that the said T. Jefferson Chambers, who attached his signature and seal, should be the party of the first part; and that the said Morgan Neville, Robert T. Lytle, William R. Foster, S. C. Ogden, James McClellan, J. York, J. S. Vattier, Geo. Graham, jr., John McCarty, and Eden B. Reeder, who also attached their signatures and seals to the said contract, should be the parties of the second part; and your orators aver, that the said contract was signed, sealed, and delivered, and intended so to be, as a valid, binding, and subsisting contract and agreement, between all the parties whose signatures and seals were attached thereto; and further, at the time of the execution and delivery of the said contract, the parties of the second part were all citizens of the State of Ohio.

And your orators further show unto your honor, that at the time of the execution of the said contract the said T. Jefferson Chambers re-

ceived from the parties of the second part, their promissory notes, payable in four, six, and twelve months from the date thereof, according to the terms of the said contract, and bearing date at or about the date of the said contract, and which said notes were executed and delivered by the said several parties of the second part, for the following amounts, that is to say, by Morgan Neville, for the amount of twelve hundred and fifty dollars; by Robt. T. Lytle, for the amount of twenty-five hundred dollars; by William R. Foster, for the amount of twelve hundred and fifty; by Sam'l C. Ogden, for the amount of twelve hundred and fifty dollars; by James McClellan, for the amount of twelve hundred and fifty dollars; by J. York, for the amount of twelve hundred and fifty dollars; by J. S. Vattier, for the amount of six hundred and twenty-five dollars; by Geo. Graham, jr., for the amount of twelve hundred and fifty dollars; by John McCarty, for the amount of twelve hundred and fifty dollars; and by Eden B. Reeder, for the amount of six hundred and twenty-five dollars; making the aggregate sum or amount of twelve thousand five hundred dollars, in the said individual notes of the said several parties of the second part; that the said T. Jefferson Chambers received the said notes to his own use and benefit; and did sell, transfer, or negotiate the same, and the avails therof apply to his own use and benefit; and which said notes, so made and delivered by the said several parties of the second part to the said T. Jefferson Chambers, were paid, lifted, or taken up severally by the said parties of the second part, by themselves, their agents, endorsers, assigns, or representatives, without any prejudice or damage to the said T. Jefferson Chambers; so that, in truth and in fact, as your orators aver, the said T. Jefferson Chambers did receive the full amount of twelve thousand and five hundred dollars, as an executed consideration for his undertakings and agreements embraced in the said contract.

And your orators further show unto your honor, that at and during the negotiation respecting the said several matters embraced in the said contract, the said Chambers represented and held out to the parties of the second part, and caused it to be believed by them, that he had an absolute and indefeasible title in fee simple to the said lands in the said contract mentioned, and that the same was indisputable, and had accrued to him in good faith from the government of the country for a past and executed consideration; and the said parties relying on the representations of the said Chambers, and believing the same to have been made in good faith, were therefore induced to enter into the said contract, and make the advances before mentioned to him, in the full expectation and belief that the said lands were, and would prove to be, a good, sufficient, and valid security for the advances as aforesaid made by them.

Your orators further show unto your honor, that the said parties of the second part, for the sake of convenience in transfer and otherwise, and with the knowledge of the said T. Jefferson Chambers, regarded the said amount of twelve thousand five hundred dollars as being divided into ten shares of twelve hundred and fifty dollars each; and your ora-

tors further show, that the original share of Morgan Neville, of twelve hundred and fifty dollars, passed by assignment and transfer to John Kennet; that the two original shares of twelve hundred and fifty dollars each, of R. T. Lytle, passed by assignment and transfer to Ezekiel S. Haines; and that, afterwards, one-half of one share, or six hundred and twenty-five dollars, passed by assignment and transfer from the said Ezekiel S. Haines to Eden B. Reeder; that the original share of James E. McClellan, of twelve hundred and fifty dollars, passed by assignment and transfer to said Ezekiel S. Haines; that the said original one-half share of J. S. Vattier, to the amount of six hundred and twenty-five dollars, passed by assignment and transfer to M. N. McLean; *the* the original share of Samuel B. Ogden, of twelve hundred and fifty dollars, passed by assignment and transfer to Robert B. Bowler; that the original share of William R. Foster, to the amount of twelve hundred and fifty dollars, passed by assignment and transfer to Eden B. Reeder, who also held by assignment and transfer one-half share, or six hundred and twenty-five dollars, of the original amount, from Ezekiel S. Haines; and that the whole interest in and under the said contract, is now held and owned by the following persons and individuals, either as original parties or assignees, and to the amount as follows, that is to say:

John Kinnet, one share, or twelve hundred and fifty dollars	$1,250
Ezekiel S. Haines, two and one-half shares, or thirty-one hundred and twenty-five dollars - - - -	3,125
M. N. McLean, one-half share, or six hundred and twenty-five dollars - - - - - - -	625
Robert B. Bowler, one share, or twelve hundred and fifty dollars - - - - - - -	1,250
Eden B. Reeder, two shares, or twenty-five hundred dollars	2,500
George Graham, jr., one share, or twelve hundred and fifty dollars - - - - - - -	1,250
Joshua York, one share, or twelve hundred and fifty dollars	1,250
John McCarty, one share, or twelve hundred and fifty dollars	1,250
Aggregate amount - -	$12,500

And, further, your orators show, that they and the said M. N. McLean being the original parties, or assignees, that they have full right, power, and authority, to enforce the said contract, and the performance of the same, either jointly or as individuals, according to the nature of the said contract and their respective interest, as created by virtue of the same; and, further, that they became the bona fide holders of an interest under and by virtue of the said contract, and to the amount of their several and respective interests, as above specified, with the full belief and assurance that the said contract was a good, subsisting, and valid agreement, to them or to whomsoever the interest should be passed by assignment, operation of law, or otherwise.

Your orators further show unto your honor, that at the time of au-

thorizing the commencement of this suit, owing to accidental circumstances, the specific consent of the said M. N. McLean could not be obtained to that effect; but your orators believe that the said McLean is willing, and would be desirous of joining as party complainant in this suit, and therefore your orators pray that the said McLean, in case of his consent to come in and contribute to the expense, may have his name inserted in the body of this bill as one of the parties complainants, in case that the same may be necessary to do full, complete, and ample justice to the rights of your orators; and your orators aver that all the said parties complainants, and the said McLean, are all citizens of the State of Ohio.

And your orators further show unto your honors, that your orators, on divers occasions heretofore, and more especially within the last two years, have applied to the said T. Jefferson Chambers, by their agents and attorneys, for an amicable adjustment and arrangement of the matters embraced in the said contract, and have requested the said Chambers to perform the said contract on his part; and that your orators have repeatedly offered to accept a conveyance or conveyances of the said land mentioned in the said contract, according to the terms thereof, and had well hoped that the said Chambers would have performed his contract, as in the same it is agreed to be performed by him. But your orators aver, that the said T. Jefferson Chambers, although he has, when applied to for adjustment, acknowledged the demand to be just, and the contract as one he was honorably bound to perform, has nevertheless always neglected and refused to execute any deed of warranty for any part or portion of the said lands mentioned or described in the said contract; and has lately, under various pretences, when applied to by your orators' agent and attorney for adjustment, as aforesaid, declared that he never would execute any other than a deed amounting to a quit claim of his title to the said land, or any part of it, and without any covenant of warranty or seizin; and has also repeatedly refused to adjust the matters embraced in the said contract by the payment of any money in lieu of the conveyance of the said land.

And your orators further shew unto your honor, that the said T. Jefferson Chambers, when applied to by the agents of your orators for adjustment of the said several matters embraced in the said contract, has pretended as a reason, among others, that since the execution of the said contract, as herein before stated, his, the said Chambers', title to the said land has been brought into dispute by adverse claimants; that some of the same are now in litigation; and that he, the said Chambers, has repeatedly declared to your orators' said agent, that he would make no conveyance that would make himself liable, under any warranty, in the deed executed against defeasance of title by his own act; and has repeatedly declared, that unless your orators would accept of such conveyance as a settlement of the matters embraced in the said contract, they never would get anything; which said refusals and declarations, on the part of the said Chambers, your orators allege, are contrary to equity and good conscience.

And your orators further shew unto your honor, upon information and belief, that the said T. Jefferson Chambers did obtain, from the Texan government, full compensation in money, script, land, or other valuable property, for the supplies furnished by him, and in arming and equipping of the Texan army referred to in the said contract, and which it was in part the object of the said parties of the second part to assist him, the said Chambers, to do, by the said advances, made by them as before stated, and which said advances did enable the said Chambers so to do. But, nevertheless, so it is, that the said T. Jefferson Chambers, lately and when applied to for the adjustment of the matters embraced in the said contract, has lately pretended and held out that the said contract, and the matters therein contained, were void and of no effect, and could not be enforced, for the reason that the parties of the second part, your orators, and the assignors of your orators, were citizens of the United States, and, at the time of executing the said contract, were aliens; which pretences, on the part of the said Chambers, your orators aver, are contrary to equity and good conscience.

And your orators further shew unto your honor, that the amount of interest, on the said twelve thousand and five hundred dollars, up to the 16th day of May, 1848, at eight per cent., is eleven thousand six hundred and sixty-six dollars and sixty-six cents, and which, added to the said twelve thousand and five hundred, would now make the sum amount to twenty-four thousand one hundred and sixty-six dollars and sixty-six cents, with the arising interest. Your orators insist they are equitably entitled to have secured to *to* them, by a decree of this honorable court, together with the costs and charges and expenses of this suit, as damages under the said contract set forth in this bill, in case of the inability of the said defendant, T. Jefferson Chambers, to make a good and valid title to the said lands agreed to be conveyed, with general warranty, as in and by the terms of the said contract it is stipulated by him.

And your orators further shew unto your honor, that they are the parties interested in the said contract executed by the said defendant, are well entitled to said claim in equity for a decree to compel a specific performance of the said contract on the part of the said defendant, T. Jefferson Chambers, in case he, the said Chambers, has the title in himself, so that he can make a valid, subsistent, and indefeasible title to your orators. But your orators also insist, as matters of equity, that they ought not to be compelled, under a decree for specific performance, to accept of title encumbered by the possession of adverse claimants; nor ought they to be compelled to accept of any title from the said Chambers, under which they could not take immediate delivery of seizin, or immediate possession of conveyance. Wherefore, your orators are compelled to ask contingent relief; and therefore, in case the defendant may not be able to make such title to the said lands mentioned in the said contract as agreed to be made by him, and which should be approved by this honorable court, and by and under which your orators can enter into immediate possession of the said lands and premises, that then your orators may be allowed an ultimate decree for compensation,

in damages, to the amount of the said twelve thousand five hundred dollars and the interest thereon, together with the costs of this suit, or decrees for your orators severally for the several or respective amount of interest they severally hold in the said contract set forth in this bill.

And your orators further shew unto your honor, that, unless they can have the full benefit and effect of the stipulations contained in the said contract, a true copy of which is set forth in hec verba in this your orators' bill of complaint, your orators will be in great danger of losing their interest in the said contract, and as they believe, will be in great danger of ultimate defeat as to obtaining anything in the same, and thereby rendered remediless in the premises. Wherefore, by means of the premises, and the matters and things set forth and stated in this your orators' said bill of complaint:

Your orators pray and insist that they may be permitted, according to the stipulations contained in the said contract, upon filing the same, to enter a preliminary decree, under the order of this honorable court, in the nature of a judgment for the amount of damages liquidated by stipulation in and by the terms of said contract, and which said decree, under the order of this court, may stand as security for the performance of any final or ultimate decree that may be made in the premises. And your orators also further pray for such other and further relief as to this honorable court shall seem meet.

To the end, therefore, that the said defendant, Thomas Jefferson Chambers, may, if he can, show why your orators should not have the relief hereby prayed, and may, upon his corporal oath, and according to the utmost and best of his knowledge, remembrance, information, and belief, full, direct, and perfect answer make to such of the interrogatories, hereinafter mentioned and set forth, as by the note hereunder written he is required to make answer. That is to say—

1st. Whether he, the said defendant, T. Jefferson Chambers, as a party of one part, and Morgan Neville, R. T. Lytle, Wm. R. Foster, Samuel C. Ogden, J. McClellan, J. York, J. S. Vattier, Geo. Graham, jr., John McCarty, and Eden B. Reeder, as parties of the other part, executed the contract, a copy of which is set forth in this bill of complaint.

2d. Whether the said defendant received from the said Neville, Lytle, Foster, Ogden, McClellan, York, Vattier, Graham, McCarty, and Reeder, their promissory notes, payable in four, six, and twelve months, or how otherwise, as a consideration for the execution of the said contract on his, the said defendant's, part.

3d. Whether he, the said defendant, put the said notes to use, and received the avails of the same, by transfer or otherwise.

4th. Whether he, the said defendant, at the time of executing the said contract, was a citizen of Texas, and the other parties citizens of Ohio.

5th. Whether he, the said defendant, has ever made any conveyance of the land mentioned in the said contract to the parties of the second

part, therein named, or to their assigns, appointees, or legal representatives.

6th. Whether he, the said defendant, has been applied to, and by whom, and at what time or times, to make said conveyance or conveyances.

7th. Whether he, the said defendant, has lately been applied to on behalf of the person interested in the said contract. Through whom was the application made; and what kind of conveyance or conveyances did he, defendant, propose to make in satisfaction of his said contract? State fully, and give the form of the deed proposed by defendant, if any.

8th. Whether he, defendant, refused, and declared that he never would execute any other deed or deeds, with any other covenants of warranty, than the one proposed by him, if any.

9th. Whether he, defendant, when application was made to him, lately, by David Ayres, the agent of complainants, declared to him, said Ayres, that, if the complainants or the parties interested did not accept of the deed or deeds in the form proposed by defendant, they would never get anything.

10th. Whether any one is in possession of the lands described in the said contract. How many are there claiming adversely to defendant; under whom do they claim; and how many suits are now depending to try title, and how many have been tried, if any? State fully.

11th. Whether he, defendant, employed the funds, or any part thereof, and what part, obtained of the contracting parties to said contract, set forth in the bill, for the uses and purposes suggested in the contract. If not so, how otherwise.

12th. Whether he, defendant, obtained satisfaction of the Texan Government for the means expended by him, and which was advanced under the said contract by the parties signing the same.

13th. Whether, at the time of the commencement of this suit, defendant is a citizen of Texas, and the complainants citizens of the State of Ohio.

14th. What title has defendant to the lands mentioned in the said contract? Set it forth fully.

15th. Whether it was for an executory or executed consideration, or how otherwise. State fully the terms and conditions of the grant to defendant, (if any,) and whether they were complied with.

May it please your honor to grant unto your orators a writ of subpœna, issuing out of, and under, the seal of the honorable court, to be directed to the said defendant, Thomas Jefferson Chambers, thereby commanding him at a day certain, and under a certain penalty therein limited, personally to be and appear before your honor, in this honorable court, and then and there full, true, and perfect answer make to all and singular the premises; and further, to stand to, and perform, and abide, such further order, direction, and decree therein, as to your honor shall seem meet. And that the said defendant, Thomas Jefferson Chambers,

upon being served with a copy of this bill, may be bound by all the proceedings in this cause. And your orators shall ever pray, &c.

JOHN KENNET,
EZEKIEL S. HAINES,
ROBERT B. BOWLER,
EDEN B. REEDER,
GEORGE GRAHAM, Jr.,
JOSHUA YORKE,
JOHN McCARTY,
Complainants.

S. SHERWOOD,
H. W. WAGNER,
E. ALLEN,
Solicitors, and of counsel for complainants residing in Galveston.

On this 24th day of May, A. D. 1848, personally appeared before me David Ayres, of the city of Galveston, and, being by me duly sworn, doth depose and say, that he is the agent and one of the attorneys in fact for the complainants to the foregoing bill of complaint; that oaths of the said complainants could not be readily procured, as they resided in the State of Ohio; that he is better acquainted with the facts of the whole case, as he believes, than any one of the said complainants; and further says he has read the foregoing bill of complaint, and knows the contents thereof, and that the same is true, to the best of his knowledge, information, and belief.

Sworn and subscribed before me, in open court, this 24th day of May, A. D. 1848.

DAVID AYRES.

THOS. BATES, *Clerk.*

The defendant, Thomas Jefferson Chambers, is required to answer the following interrogatories, numbered 1, 2, 3, &c.

1st. Did you execute and deliver the contract, a copy of which is set forth in the foregoing bill of complaint, as the party of the first part?

2d. Did Morgan Neville, R. T. Lytle, Wm. R. Foster, Saml. C. Ogden, J. McClellan, J. Yorke, J. S. Vattier, Geo. Graham, jr., John McCarty, and Eden B. Reeder, whose names appear to the said contract, execute and deliver the same as parties of the second part?

3d. When and where was the said contract executed?

4th. Did you receive from the said Neville, Lytle, Foster, Ogden, McClellan, Yorke, Vattier, Graham, McCarty, and Reeder, their several and respective promissory notes, payable in four, six, and twelve months, as the consideration for your execution of the said contract? If nay, how otherwise? State specifically.

5th. Did you put the said notes to use, and receive the avails of them by transfer or otherwise?

6th. *Was* you at the time of the execution of the said contract a citizen, and have you been ever since, and are you still so?

7th. Were the other parties, that is, the parties of the second part in the said contract, citizens of the State of Ohio, at the time of the execution of the said contract?

8th. Have you ever made any conveyance of the land mentioned and described in the said contract to the other contracting parties, or parties

of the second part, or to their assignees or appointees, or to their legal representatives, or to any other person?

9th. Have you been applied to in behalf of the parties of the second part, their assignees or legal representatives, to make conveyance or conveyances of the land described in the said contract? If so, when, by whom, at what time and times? State fully.

10th. Have you lately been applied to on the behalf of the parties interested as original contractors, or as assignees, or any of them, to make conveyance of said lands? If so, by whom was application made; at what time and times; and how many times?

11th. Did you refuse to make any conveyance with general warranty, at the time or times of such applications; and what kind of a conveyance did you propose to make of the lands described in the contract? State fully.

12th. Did you draw out very lately, and exhibit to David Ayres, of Galveston, the form of a conveyance or conveyances you proposed to make to the complainants in satisfaction of the said contract in the bill set forth?

13th. Did you draw the same out and exhibit to him at his request, when applied to by him as one of the agents or attorneys of complainants? If yea, state fully. State fully what was the form of the deed or conveyance proposed by you. State fully and set out a copy.

14th. Did you declare to the said Ayres, that the form of the conveyance or deed proposed by you contained the only warranty you would give in making conveyance to complainants; and how many times did you so declare?

15th. Did the said Ayres, at the time and times of applying to you for a conveyance and conveyances, inform you that he was ready to accept conveyances in accordance with the contract set out in the bill, and did he so inform you repeatedly?

16th. Did you more than once, and on many occasions, declare to the said Ayres, on his application for a conveyance, that unless complainants would accept of the deed or deeds, the form of which was proposed by you, that they never would get any thing; did you so declare to him at all?

17th. Is any person in possession of the lands described in the contract set out in the bill? If so, how many persons or claimants?

18th. Do they claim adversely to yourself?

19th. Are there *and* suits pending on claims adverse to yours? If so, how many?

20th. Have any suits been tried and determined on claims to said land, adverse to yours? If so, how many, and how determined? State fully.

21st. Did you employ the funds obtained of the contracting parties to said contract, set out in the bill, for the uses and purposes suggested in the contract? If not, how otherwise?

22d. Did you obtain satisfaction of the Texan Government for the

means expended by you, and which were advanced under the said contract by the parties signing the same?

23d Are the complainants in this bill, and also the said M. N. McLean, citizens of the State of Ohio; were they so at the time of the commencement of this suit?

24th. What title have you to the lands described in the contract set out in the bill? State fully.

25th. Was your title for an executory or executed consideration? State fully the terms of the grant to you, and the conditions of the same, (if any,) and whether the conditions have been complied with or not.

S. SHERWOOD,
H. W. WAGNER,
E. ALLEN, *Solicitors,*
And of counsel for complainants.

And thereupon the following subpœna was issued, that is to say, to wit:

UNITED STATES OF AMERICA,
District of Texas.

The President of the United States of America, to Thomas Jefferson Chambers, greeting:

You are hereby commanded to appear personally before the honorable the United States district court, exercising the powers and jurisdiction of a circuit court of the United States, at a court to be holden in the city of Galveston, in and for the said district, on the first Monday of June next, or whensoever the said court shall there be, to answer a bill exhibited against you by John Kennett, Ezekiel Haines, Eden B. Reeder, George Graham, jr., John McCarty, Joshua Yorke, Robert B. Bowler, and to do further and receive what the said court shall have considered in that behalf.

And this you are not to omit, under the penalty of two hundred and fifty dollars.

Witness the honorable John C. Watrous, judge of said court, and seal of court, at the city of Galveston, this 24th day of May, A. D. eighteen hundred and forty-eight, and seventy-second year of the independence of the United States.

THOS. BATES, *Clerk.*

The defendant is required to enter his appearance in the above suit, in the clerk's office, on or before the first Monday of June next, otherwise the bill will be taken as confessed.

THOS. BATES, *Clerk.*

Received May 24th, 1848, executed same day by serving the defendant in person with a true copy of the within sup.

JAS. H. COCKE, *Marshal,*
By SAM. HINTON, *Dept'y Marshal.*

And afterwards, to wit, on the 19th day of July, in A. D. 1848,

came the defendant, Thomas J. Chambers, and filed his demurrer to the bill of complaint in the words and figures following, to wit:

The demurrer of Thomas J. Chambers, defendant, to the bill of complaint of John Kennett, Ezekiel S. Haines, Eden B. Reeder, George Graham, jr., John McCarty, Joshua Yorke, and Robert B. Bowler, complainants.

The defendant, by protestation, not confessing all or any of the matters or things in and by the said bill set forth and complained of, to be true in any manner or form as the same are therein and thereby set forth and alleged, saith, he is advised that the said bill contains not any matter or thing good or sufficient in law to call this defendant in question in this honorable court, but there is good cause of demurrer to the same; and, therefore, this defendant doth demur thereto, and for causes of demurrer to said bill sets down and shows the following, to wit:

1st. The said bill, if the facts therein were true, which is in no sort admitted, contains no matter or thing of equity upon which to ground any decree, or give the complainants any aid or relief.

2d. The complainants' said bill shows no legal or valid agreement upon which to ask the aid or decree of the court, but to the contrary sets out and shows an agreement which was in violation of the neutrality of the United States towards the Republic of Mexico in her contest with Texas.

3d. The complainants' said bill seeks the aid or assistance of the court to enforce the specific execution of an agreement made in the State of Kentucky, between citizens thereof and this defendant, in violation of the policy of the Government of the United States in her intercourse with foreign governments.

4th. The said complainants' bill has not made out any case upon which said complainants are entitled to the relief or decree prayed or asked by said bill.

5th. The complainants by their said bill have shown that M. N. McLean is a necessary party to said bill, and he has not been made a party complainant or defendant.

6th. It appears by the said bill that the complainants, at the time said agreement in said bill mentioned was executed, were aliens to the Republic of Texas, and not residents therein, and that the persons with whom said agreement was made were also such aliens and non-residents; therefore, and for divers other errors and imperfections in the said bill appearing, this defendant doth demur in law thereto, and humbly demands the judgment of this honorable court, whether he shall be compelled to put any further or other answer to said bill; and humbly prays to be hence dismissed with his reasonable costs.

ROB. HUGHES,
For defendant.

I do hereby certify, that in my opinion the above demurrer is well founded in point of law.

ROB. HUGHES.

UNITED STATES OF AMERICA,
District of Texas, to wit:

This day, Thomas J. Chambers personally appeared before me, Archibald M. Hughes, commissioner of affidavits, and made oath in due form that the foregoing and within demurrer is not interposed for delay.

T. J. CHAMBERS.

Sworn and subscribed the 19th July, 1848.

A. M. HUGHES, *Com'r.*

THE UNITED STATES OF AMERICA,
District of Texas, sct:

District court, December term, 1848.

In chancery between
JOHN KENNETT et al., complainants,
and
THOMAS J. CHAMBERS, defendant. } 30.

Original bill.

Be it remembered, that on the 11th day of January, A. D. 1849, this cause came on to be heard upon the complainants' bill, and the defendant's demurrer thereto, in presence of counsel for both parties, before the honorable John C. Watrous, judge, &c., and the court being sufficiently advised, thought fit to order, adjudge, and decree, and it is accordingly ordered, adjudged, and decreed, that the said demurrer be allowed, and that complainants' bill be dismissed, and that they pay the costs thereof to be taxed, &c.

JOHN C. WATROUS.

And afterwards, to wit, on the first day of February, A. D. 1849, the following order in the aforesaid cause was made in the words and figures following, to wit:

Upon motion of complainants by counsel, it is ordered that a re-argument upon the demurrer in this cause be, and the same is hereby, granted.

And afterwards, to wit, on the eighth day of February, A. D. 1849, the following order in the aforesaid cause was made in the words and figures following, to wit:

The re-argument in this cause being fully heard, it is ordered that the decree made herein at a former day of this term, stand as originally entered up.

(In equity.)

UNITED STATES DISTRICT COURT,
District of Texas.

JOHN KENNETT and others,
vs.
THOMAS JEFFERSON CHAMBERS.

And now at this day, that is to say, on the 9th day of February, in this same term of the court, came the complainants in the above entitled cause by their solicitors, and give notice of an appeal from the decree of the court in the said cause, sustaining the demurrer, and dismissing the bill therein.

SHERWOOD & WAGNER & E. ALLEN,
Solicitors, and of counsel for complainants.

(In equity.)

UNITED STATES DISTRICT COURT,
District of Texas.

JONHN KENNETT, Ezekiel S. Haines, and others,
vs.
THOMAS JEFFERSON CHAMBERS.

To the honorable the judge of the district court of the United States, for the district of Texas. The petition of John Kennett, Ezekiel S. Haines, Robert B. Bowler, Eden B. Reeder, George Graham, jr., Joshua Yorke, and John McCarty, complainants in the above entitled cause, respectfully sheweth:

That your petitioners are desirous of removing the above cause by appeal to the Supreme Court of the United States; that they are advised by counsel, and verily believe, that they have good cause for such appeal; and further that they have good ground on the merits for relief against the decree entered in the cause. Your petitioners therefore pray that an appeal may be allowed in the said cause to the Supreme Court of the United States. And your petitioners, &c.

SHERWOOD & WAGNER & E. ALLEN,
Solicitors for complainants, residing in Galveston, Texas.

We, the undersigned, having examined the records and proceedings in the above entitled cause, do certify, that in our opinion there is good and sufficient cause for appeal from the final decree of this court in the same on the merits. Dated February 11, 1849.

LORENZO SHERWOOD,
Of counsel for complainants, residing at Galveston.
H. W. WAGNER,
Of counsel for complainants, residing at Galveston.

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UNITED STATES DISTRICT COURT,
District of Texas.

(In equity.)

JOHN KENNETT, Ezekiel S. Haines, Robert B. Bowler, Eden B. Reeder, George Graham, jr., Joshua Yorke, and John McCarty, complainants,
vs.
THOMAS JEFFERSON CHAMBERS, defendant.

I allow the appeal in the above entitled cause to the Supreme Court of the United States, and direct the clerk to transmit a certified copy of the record and proceedings in the said cause to the said Supreme Court, on the complainants entering into bond to the defendant, in the penalty of five hundred dollars, to be approved by the clerk of this court, conditioned to pay all such costs as shall be decreed against the complainants. Dated February 11, 1849.

JOHN C. WATROUS,
Judge of the United States court, for the district of Texas.

And afterwards, to wit, on the 9th day of February, A. D. 1849, the following order was made in the aforesaid cause, in the words and figures following, to wit:

The complainants herein being dissatisfied with the decree of the court rendered herein, prayed an appeal to the next term of the Supreme Court of the United States, which is granted him upon his entering into bond as required by law.

* * * * * *

Know all men by these [presents,] that we, David Ayres, of the city of Galveston, and Moses Parke, of the county of Washington, State of Texas, are held and firmly bound unto Thomas Jefferson Chambers, in the penal sum of five hundred dollars, to be paid to Thomas Jefferson Chambers, his heirs, executors, administrators, or assigns; and to which payment, well and truly to be made, we bind ourselves, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 10th day of February, A. D. 1849.

The conditions of this obligation *is* such, that whereas in a suit in the district court of the United States, for the district of Texas, in which John Kennett, Ezekiel S. Haines, Eden B. Reeder, George Graham, jr., John McCarty, Joshua Yorke, and Robert B. Bowler, were complainants, and the said Thomas Jefferson Chambers, was defendant, a final decree has been rendered on demurrer against the said complainants, and the bill of complaint therein dismissed. And the complainants, conceiving themselves aggrieved by such decree, have appealed therefrom to the Supreme Court of the United States.